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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,032	05/31/2007	Yoshitugi Hashiba	MIYG.0003	2346

7590 12/17/2008
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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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12/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,032	Applicant(s) HASHIBA ET AL.	
	Examiner PAUL R. DURAND	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/31/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tramposch et al. (US 6,131,368).

Tramposch discloses the invention as claimed including heating a granular object having adsorption properties, placing the granules in a storage bag, sealing the bag and cooling the bag to form a packaged product (see entire document).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmied (US 3,269,079) in view of Jones (US 5,682,758).

In claims 1 and 4, Schmied discloses the invention as claimed including heating device 61, charging/filling device 21, sealing device 11 and subsequent cooling of the package by air (see figure 1 and col. 2, line 47 - col. 3, line 19).

What Schmied does not disclose is the use of a cooling device which supports the package during cooling. However, Jones teaches that it is old and well known in the art to provide a cooling device 18, which cools a product 28, while being supported on a conveyor (see figure 1 and col. 4, lines 26-34).

Moreover, while the combination of Schmied does not disclose the use of a granular object having adsorption properties, the claims are drawn to an apparatus and as such, must be distinguished over the prior art in terms of structure and not the article worked upon by the apparatus. *See generally* MPEP § 2115.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Schmied with the cooling means as taught by Jones for the purpose of cooling a heated packaged product to an ambient temperature.

In claim 2, the claim does not further claim any structural limitation and appears to be an intended use recitation. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the *structural* limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). *See also* MPEP § 2114.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmied and Jones in view of Trampusch.

The modified invention Schmied discloses the invention as claimed and as applied to claims 1 and 2 above except for the heating range of 55-80 degrees C.

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However, Tramposch teaches that it is old and well known in the art to heat an adsorption material to a temperature between 40-90 degrees C for the purpose of preventing an oxidizing surface on the material (see col. 4, line 53 - col. 5, line 30).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Schmied with the heating range as taught by Tramposch for the purpose of preventing an oxidizing surface on the material.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. DURAND whose telephone number is (571)272-4459. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL R. DURAND/
Primary Examiner, Art Unit 3721
December 17, 2008